valuable lot than the one at the rear. Lumb did not dispute rent could be $6,000 per annum. Thus less rates at 10% would be $600. Repairs and insurance we would say $200. Net annual rental would be $5,200. We would also capitalise at (12¾ years' purchase). This would give a figure of $66,300 and by adding $110 the final figure would be $66,410.

Having regard to the evidence and taking into consideration various factors which were not taken into consideration by the Superintendent it is not unreasonable to say that the fair and proper value to be given to the five lots at the material date should be as follows:—

For Lot I	$50,600	an increase of $24,200
For Lot II	$75,615	an increase of $34,115
For Lot III	$40,823.50	an increase of $4,823.60
For Lot IV	$66,404.50	an increase of $13,004.50
For Lot V	$66,410	an increase of $14,810.

The Superintendent's awards are varied accordingly. The above awards are made under section 60(a) of the Land Code and no other sum is awarded under (b), (c), (d), (e) or (f) of the said section. It is noted that objectors of Lots III, IV and V accepted the awards under protest. Pursuant to section 69 of the Land Code the Superintendent shall pay interest on the excess at 4% per annum on the said three lots from the date he took possession. Objectors of Lots I and II did not accept the awards and also such compensations were not paid into court deposit. Therefore pursuant to section 72 the Superintendent shall pay interest on the whole amount awarded at 4% per annum from the date he took possession.

[After arguments on costs his Lordship directs that the respondent pays each assessor $200 and that apart from this each party to pay his own cost].

Order accordingly.

SINGARAM v. FERNANDO & ANOR.

[A.C.J. (MacIntyre J.) April 22, 1966]

[Ipoh — Court Appeal No. 2 of 1966]

Landlord and Tenant — Notice to quit — Notice terminating tenancy on last date of Gregorian month — Validity of.

This was an appeal against the decision of the president of the sessions court whereby the appellant was ordered to give up vacant possession of premises in Kuala Kangsar. The principal ground of appeal was that the notice to quit which required the appellant to vacate and deliver up possession of the premises on or before July 31, 1962, was invalid as there was no evidence that the last day of the current period of tenancy fell on the last day of the month according to the Gregorian calendar.

Held: the weight of evidence in this case showed that the tenancy was on a monthly basis commencing on the first day of the month and ending on the last day of the month and therefore, the notice to quit in this case was valid.

Cases referred to:—

(1) *Lemon* v. *Lardeur* [1946] 1 K.B. 613.

(2) *Bathavon Rural District Council* v. *Carlile* [1958] 1 Q.B. 461.

(3) *Ko Teck Kim* v. *Watkinson* [1961] M.L.J. 73.

(4) *Migotti* v. *Colvill* (1878-9), 4 C.P.D. 233.

(5) *Hankey* v. *Clavering* [1942] 2 K.B. 326.

CIVIL APPEAL.

P. P. Dharmananda for the appellant.

M. Edgar (*T. C. Tang* with him) for the respondents.

MacIntyre J.: This is an appeal against the decision of the learned president of the sessions court at Kuala Kangsar in a tenancy action brought by the respondents whereby the appellant herein was ordered to give up vacant possession of premises No. 9-B, Kenas Road, Kuala Kangsar.

The house in question was built by the appellant on a portion of land held under E.M.R. 1231, Lot 102, Mukim Saiong, district of Kuala Kangsar, of which an undivided 1/4th share belongs to the estate of one W. R. Fernando (deceased) of which the 1st respondent is the present administrator and the remaining 3/4th share is registered in the name of the 2nd respondent herein.

The tenancy agreement in respect of the premises was an oral one as evidenced by a letter of consent dated the 2nd of September 1953 and marked D.3, according to which one V. Fernando, the then administrator of the estate of the aforesaid deceased consented to allow the appellant to build a dwelling house for himself and to accept a rent of $5 per month from the date of completion of the said house.

At the hearing of this appeal counsel for the appellant abandoned the ground of appeal mentioned in paragraph 7 of the memorandum and both counsel agreed that the tenancy was a monthly tenancy. The only point in issue was the validity of the notice to quit (D.4) dated the 9th of June 1962 which required of the appellant to vacate and deliver possession of the premises on or before the 31st day of July 1962.

Counsel for the appellant submitted that the validity of the notice to quit depended on whether or not the last day of the current period of tenancy fell on the last day of the month according to the Gregorian Calendar; and contended that since the respondents, on whom lay the onus of proof of the date of termination of the tenancy had failed to discharge that burden, the action should have been dismissed. In support of this contention, he cited *Lemon* v. *Lardeur* [1]; and

Bathavon Rural District Council v. *Carlile* [2]; and *Ko Teck Kim* v. *Watkinson.* [3]

The principles underlying these decisions were not disputed and it is, therefore, not necessary for me to consider them here.

The learned president held that the date of the commencement or termination of the tenancy had not been established by evidence. He was, therefore, of the opinion that a reasonable notice to quit was sufficient and gave judgment for the respondents.

The only direct evidence touching upon the possible date of the commencement of the tenancy was given by P.W.2, the former administrator of the estate. He it was who signed the letter of consent (D.3) dated the 2nd of September 1953. According to his evidence in cross-examination he said, and I quote:

"The right to occupy the land commences on 2.9.53. I agree that the tenancy begins on 2.9.53."

It is clear from this evidence that the appellant had the right to go into occupation of the land on the 2nd of September 1953 for the purpose of erecting a dwelling house. However, that did not necessarily mean that the tenancy commenced on that date. The second sentence of P.W.2's evidence quoted above is merely an opinion and not evidence of a fact. However D.3 makes it plain that the appellant, and I quote again, "shall pay a site rental of $5 per month commencing from the date of completion of the said dwelling house". I would interpret these words to mean that the monthly tenancy commenced on the date of the completion of the house. They could also mean, as counsel for the appellant would have it, that the tenancy commenced on the date when the appellant went into occupation of the land but was allowed to start paying the rent in arrears only from the date of completion of the house; but in my opinion such an interpretation would be unduly straining the language to accommodate a point of view held by counsel but unsupported by any evidence on the part of the appellant.

Counsel for the respondents, on the other hand, submitted that the letter dated the 12th of June 1962 (P.2) written by the appellant forwarding $20 being the rent for the said premises for the months of November and December 1961 and for the months of January and February 1962 would indicate that the appellant had no doubt that the period of the monthly tenancy was from the first day to the last day of a month according to the Gregorian Calendar. He further submitted that if on the evidence there was any doubt as to when the monthly tenancy commenced, then the tenancy must be presumed to have commenced on the first day of the month according to the Gregorian Calendar by virtue of the definition of a 'month' in section 2(56) of the Interpretation and General Clauses Ordinance, 1948. According to this definition a 'month' means a calendar month according to the Gregorian Calendar. I am unable to see how this definition could be of any help unless 'month' was defined as comprising the period commencing on the first day and ending on the last day of a month according to the Gregorian Calendar. The phrase 'calendar month' had been judicially considered and in *Migotti* v. *Colvill,* [4] it was held that a calendar month is a month which ended on the same date as it commenced on the previous month, but if there was no corresponding date in the following month then the period would expire on the last day of that month.

On looking through the evidence as a whole, it appears to me that no definite date was fixed for the commencement of the tenancy when D.3 was signed. It would seem that the intention of the parties was that tenancy should commence only after the building of the dwelling house had been completed. No evidence was called as to when the house was completed — an information which would be within the special knowledge of the appellant.

However, it would appear from P.2, that the appellant tendered the rent due and outstanding for four months on the basis that it was a monthly tenancy commencing from the 1st day and terminating on the last day of the month according to the Gregorian Calendar. The relevant portion of P.2 reads:

"I am sending herewith money order for $20 being site rental for the months of November, December 1961, and January and February 1962 — 4 months at $5 per mensem."

It would be against all rules of construction to hold, that when rent is tendered for the months of January and February 1962, that it was not tendered as rent for the period of a monthly tenancy commencing on the first day and ending on the last day of the month of January and February.

In *Hankey* v. *Clavering,* [5] Lord Greene M.R., referring to a notice to quit on the 21st of December when under the terms of the lease the proper date should have been the 25th of December said, and I quote:

"It is perfectly true that in construing such a document as in construing all documents, the court in a case of ambiguity will lean in favour of reading the document in such a way as to give validity....."

Taking into consideration all the circumstances of this case, I must hold that the weight of evidence supports the validity of the notice to quit and that the learned president was right in making the order for possession although I do not agree with his reasons in support thereof.

The appeal is therefore dismissed with costs

and I direct that the respondents' solicitor's bill of costs be taxed on the High Court scale.

Appeal dismissed.

Solicitors: *Dharmananda & Co.; T. C. Tang & Co.*

HARUN v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Harley Ag.C.J. (Borneo) and Raja Azlan Shah J.) April 25, 1966]

[K.L. — Federal Court Criminal Appeal No. X. 7 of 1966]

Penal Code, s. 302 — Murder — Defences of insanity and provocation — Onus of proving insanity — Quantum of proof.

In this case the appellant had been convicted of murder. The defence of insanity was raised but no evidence was called by the defence to support it. On the defence of provocation which was raised, the trial judge directed the assessors as follows:— "I am in no way satisfied on balance of evidence, bearing in mind both the events of the previous day and those on the morning of the 21st July, that the accused was so gravely and suddenly provoked as to be deprived of his self-control when he struck Maria. Nor has he raised doubts in my mind which should be resolved in his favour".

Held: (1) if the defence wished to raise the defence of insanity it was for them to call evidence to provide a foundation for it. It was not for the prosecution to call evidence to show that he was sane; it was for the defence to call evidence to show that he was insane;

(2) the passage in the summing up of the learned trial judge on the issue of provocation, taken as a whole, correctly stated the law regarding the quantum of proof.

Cases referred to:—

(1) *R.* v. *Oliver Smith* 6 Cr.App.R. 19.

(2) *Kwaku Mensah* v. *The King* [1946] A.C. 83.

FEDERAL COURT.

Shelley Yap for the appellant.

Idris bin Yusoff (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): This appellant was convicted for murder in the High Court in Borneo and sentenced to death. The charge against him was that on 21st July last year at Pamol Estate near Sandakan he killed a woman Maria in contravention of section 302 of the Penal Code.

Against his conviction he has now appealed.

It has never been in question, it has never been denied and at the trial it was proved up to the hilt, that the appellant killed the deceased woman by striking her 3 times in vital parts of her body with a "parang".

For some time previous the appellant, who was a young man of some 21 years of age, had been living as a lodger with the deceased woman and her husband, and there is no question that during that period the deceased woman, who seems to have had a very strong personality, had behaved in a very domineering way towards her young lodger. I think that I should observe at this stage, in fairness to the deceased, that there has never been any suggestion of any impropriety between the deceased woman and the appellant. Nevertheless the deceased woman does appear to have treated the appellant in a very domineering way and although there is considerable conflict of testimony at the trial as to the extent of this treatment there is no question that on a least one occasion the deceased woman beat the appellant. It was on the morning after this beating that the appellant, in circumstances which have not been related in detail, attacked the deceased woman and killed her.

At the trial, which was before a judge with the aid of assessors, there was no real question as to the killing, the only defences being temporary insanity and grave and sudden provocation as defined in the first exception to section 300 of the Penal Code.

Before us the attack which has been launched against the conviction by Mr. Yap, and it has been one of very great persuasiveness, has been based on the way in which these two defences were dealt with at the trial.

As regards insanity the assessors were of the opinion that the defence was not made out and the judge agreed with them.

At the trial no foundation whatsoever was laid for that defence. On 29th November, 1965, the appellant had been certified mentally unfit to stand his trial but when the trial commenced on 9th February, 1966, a letter was produced from the same physician who had said he was unfit to stand his trial some months earlier and that letter was to the effect that the appellant showed normal mentality and was fit to be present in court for criminal trial. The judge clearly accepted that, and in our view accepted it rightly, as a certificate in accordance with section 286 of the Criminal Procedure Code of Sabah and counsel for the defence expressly said he did not suggest that the appellant was unfit to stand his trial. Clearly there was some medical evidence as to the appellant's state of mind and if the defence wished to raise the defence of insanity it was for them to call evidence to provide a foundation for it. It was not for the prosecution to call evidence to show that he was sane. It was for the defence to call evidence to show that he was insane (see *Oliver Smith* [1]).

With regard to provocation the assessors took the view that there was provocation so as to reduce the killing to culpable homicide not amounting to murder. The judge, however, disagreed.

In this connection the judge, in our view,